

REMARKS**I. General:**

Claims 1-17 were rejected under 35 U.S.C. § 102(f) because, according to the Examiner, the Applicant did not invent the claimed subject matter. For the reasons that follow, Applicant respectfully requests reconsideration and allowance of rejected claims 1-17.

Claim 2 was rejected under 35 U.S.C. § 102(b) because, according to the Examiner, it is anticipated by U.S. Patent No. 6,287,064 to Jhumra et al. (hereinafter referred to as "Jhumra"). For the reasons that follow, Applicant respectfully requests reconsideration and allowance of the rejection of claim 2.

Claims 1-17 were rejected under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) because, according to the Examiner, they are anticipated by or obvious over U.S. Patent No. 5,779,411 to Vasseur et al. (hereinafter referred to as "Vasseur"). For the reasons that follow, Applicant respectfully requests reconsideration and allowance of rejected claims 1-17.

II. Applicant requests withdrawal of the 35 U.S.C. § 102(f) rejections of claims 1-17

According to the Examiner, "Applicant's assertion that John Fritsch is the sole inventor of the present application is acknowledged, and therefore the oath and declaration is now presumed to be correct." However, according to the Examiner, merely because of an error on the coversheet of the present application at the time of filing, "[t]he sole inventor (John Fritsch) has effectively admitted that Kent Kallsen is the sole inventor of the entire disclosure of the present invention, and/or that the present invention was known by another." According to the Examiner, Applicant has not provided a satisfactory showing that would lead to a reasonable conclusion that applicant is the inventor of the subject matter disclosed in the article and claimed in the application, as provided by M.P.E.P. § 2137. For the reasons that follow, Applicant requests reconsideration and withdrawal of these rejections.

According to the M.P.E.P., the party or parties executing an oath or declaration under 37 CFR § 1.63 are presumed to be the inventors. M.P.E.P. § 2137.01. Furthermore, in regard to an inventorship correction, "as between inventors their word is normally taken as to who are the actual inventors" when there is no disagreement. M.P.E.P. § 2137.01. Accordingly, despite the error in the coversheet, Applicant respectfully contends that John Fritsch's previously submitted declaration, which the Examiner reasonably presumes is correct, constitutes a satisfactory showing that would lead to a reasonable conclusion that applicant is the inventor. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 102(f) rejections of claims 1-17.

III. Applicant requests withdrawal of the 35 U.S.C. § 102(b) rejection of claim 2 as being anticipated by Jhumra.

For anticipation under 35 U.S.C. § 102, the reference must teach every aspect of the claimed invention. M.P.E.P. § 706.02. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). "The identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131 (citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)).

Claim 2 recites "a fastener configured to tap threads into the acceptor." According to the Examiner, "Jhumra et al. discloses ... a screw (herein, "fastener") capable of tapping threads into the acceptor. However, in the Office Action dated December 22, 2004, the Examiner took the position that reference numeral "24" in Jhumra corresponded to Applicants acceptor. However, Jhumra clearly teaches that reference numeral "24" is a "second bushing." Jhumra, Col. 4, ln. 36. The "second bushing 24" of Jhumra is provided with a "nut holding bore portion 40." Jhumra, Col. 4, ll. 36-47. According to Jhumra, the nut holding bore portion 40 substantially encapsulates the nut member 12, which is provided with a threaded bore 57 that is adapted to matingly receive the threaded shank portion 21a of the screw or bolt 20. Jhumra, Col. 4, ll. 47-49 and Col. 4, ln. 67 - Col. 5, ln. 2. Consequently, it is clear that the "screw or bolt 20" of Jhumra is adapted to mate with the "threaded bore 57" of the "nut member 12." Additionally, it is clear that the "screw or bolt 20" of Jhumra is not be capable of tapping threads into the "second bushing 24" because the "nut holding bore portion 40" thereof substantially encapsulates the "nut member 12" and does not even contact the "screw or bolt 20." Accordingly, for at least this reason, Applicant respectfully requests reconsideration and withdrawal of 35 U.S.C. § 102(b) rejection of claim 2.

IV. Applicant requests withdrawal of the 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) rejections of claim 1-17 as being anticipated by or obvious over Vasseur.

The legal concept of *prima facie* obviousness allocates who has the burden of going forward with production of evidence in each step of the examination process. M.P.E.P. § 2142. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142. If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of on nonobviousness. M.P.E.P. § 2142.

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." M.P.E.P. § 2143.03. "It is essential that office

personnel find some motivation or suggestion to make the claimed invention in light of the prior art teachings.” M.P.E.P. § 2144.08, Part II.A. If the “proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” M.P.E.P. § 2143.01. When evaluating whether one or more prior art references suggests or teaches all the claim limitations, each prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. M.P.E.P. § 2141.02. For the reasons the reasons that follow, Applicants respectfully request that the rejection of Claims 1-17 be withdrawn.

Claim 1 recites “an acceptor located on the second substrate segment” and “the acceptor is provided with a first cooperating surface, a second cooperating surface a first securing surface, and a second securing surface.” According to the Examiner, Vasseur teaches “a U-nut (1) having ... first substrate segment (2), and second substrate segment (4)” and “an acceptor (16) having first and second cooperating surfaces (8, 11) and first and second securing surfaces (16).” However, Applicant points out that the Examiner has improperly construed the “catch 16” of Vasseur as the constituting acceptor, first securing surface, and the second securing surface of claim 1. Second, Applicant points out that the “catch 16” of Vasseur is not provided with the “slot 8” and “axial bore 11” as the Examiner contends. As Vasseur clearly teaches, the “slot 8” is in fact located on a “shaft 4” and a “head 5” and the “axial bore 11” is formed in a “nut body 1.” Vasseur, Col. 2, ll. 21-30. Accordingly, Applicant respectfully contends that the “catch 16” of Vasseur is clearly not provided with the “slot 8”, “axial bore 11”, “catch 16”, and “catch 16” as the Examiner contends. Accordingly, for at least this reason, Applicant respectfully requests reconsideration and withdrawal of the U.S.C. § 102(b) and 35 U.S.C. § 103(a) rejections of claim 1. Since, claims 3-8 and new claims 18, 19 depend from claim 1, they too are allowable for at least this reason.

Claims 7, 13, and 17 recite “the first angled surface is at an angle with respect to an axis of the first stem that measures 45° and the second angled surface is at an angle with respect to an axis of the second stem that measures 45°.” According to the Examiner, Vasseur teaches “angled 45° surface (26, 27). Vasseur teaches that reference numeral “26” is an “external tooth” and that reference numeral “27” is also an “external tooth.” However, contrary to the Examiner’s assertion, Vasseur simply does not teach or suggest the angle of the external teeth “26, 27.” Accordingly, for at least this reason, Applicant respectfully requests reconsideration and withdrawal of the U.S.C. § 102(b) and 35 U.S.C. § 103(a) rejections of claims 7, 13, and 17.

Amended claims 2 and 16 and new claim 18 recite "the flex area flexing so that the first coupling surface engages the first securing surface and the second coupling surface engages the second securing surface thereby coupling the acceptor to the retainer," which is neither taught nor suggested by Vasseur. Accordingly, for at least this reason, Applicant respectfully requests reconsideration and withdrawal of the U.S.C. § 102(b) and 35 U.S.C. § 103(a) rejections of claims 2 and 16 and allowance of new claim 18. Furthermore, since claims 9-13 and new claim 20 depend from claim 2, they too are allowable for at least this reason.

Amended claim 14 and new claims 19 and 20 recite "an installation member located on an end of the substrate that is configured to rest upon an edge of a bracket and is provided with a first portion that is generally perpendicular to a plane of at least one of the first or second substrate segments and a second portion that is generally parallel to the plane of at least one of the first or second substrate segments," which is neither taught nor suggested by Vasseur. Accordingly, for at least this reason, Applicant respectfully requests reconsideration and withdrawal of the U.S.C. § 102(b) and 35 U.S.C. § 103(a) rejections of claim 14 and allowance of new claims 19 and 20. Furthermore, since claims 15-17 depend from claim 14, they too are allowable for at least this reason.

Conclusion

Applicants submit that the subject matter of the present application is novel, non-obvious, and useful, and therefore respectfully request prompt consideration and allowance of the present application.

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Respectfully Submitted,

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